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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF	)	
JERRY APPLE,	)	
	)	
Appellant,	)	PCHB No. 996
	)	
v.	)	FINAL FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
STATE OF WASHINGTON,	)	AND ORDER
DEPARTMENT OF ECOLOGY,	)	
	)	
Respondent.	)	

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These matters, the appeals from two civil penalties (Docket Nos. DE 76-109 and 110) and notice of violation (Docket No. DE 76-111) came before the Pollution Control Hearings Board, Chris Smith and Dave J. Mooney at a formal hearing in Lacey, Washington on May 6, 1977. Hearing examiner David Akana presided.

Appellant appeared through his attorney, Ramon Escure; respondent appeared through Laura E. Eckert, Assistant Attorney General.

Respondent's Motion to Dismiss the appeal on the grounds of non-compliance with WAC 371-08-075 and 371-08-080 in Docket Nos. DE 76-109

1 and 110 and to dismiss Docket No. DE 76-111 on the ground that the subject  
2 notice of violation did not constitute a final order of the Department  
3 under chapter 90.48 RCW was heard as a preliminary matter. The motion  
4 as to non-compliance with WAC 371-08-075 and 371-08-080 in Docket Nos.  
5 DE 76-109 and 110 should be denied and as to the notice of violation in  
6 Docket No. DE 76-111 should be granted.

7 Counsel for respondent made an opening statement. Witnesses were  
8 sworn; exhibits were admitted.

9 Having heard the testimony, having examined the exhibits, having  
10 considered the Stipulation of Facts filed on August 16, 1977, and being  
11 fully advised, the Pollution Control Hearings Board makes these

12 FINDINGS OF FACT

13 I

14 Appellant is the owner of certain property located at the inter-  
15 section of 21st Street and Milton Way in Milton, Washington (hereinafter  
16 "Apple site") upon which solid waste materials have been deposited.  
17 Beginning October 3, 1974, appellant was possessed of a solid waste land-  
18 fill permit limited to deposits of bark, rock, and asphalt issued by the  
19 Tacoma-Pierce County Health Department. On January 3, 1975 as a result  
20 of complaints received by respondent, an inspector visited the Apple  
21 site. Because numerous violations of the permit conditions were  
22 noted at that and on other occasions, respondent, on February 7, 1975,  
23 recommended that the Health Department suspend appellant's permit and  
24 that further action be taken to correct the discharge of leachates. The  
25 permit was subsequently revoked by the Health Department.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

1 II

2 On December 16, 1975<sup>o</sup> and on other occasions, leachate left the  
3 Apple site through a drainage ditch under a road, to a pond located  
4 on a neighbor's property. From the pond, the leachate travelled to a  
5 concrete box, through a culvert, and onto the shores of and into Surprise  
6 Lake, a public water of the state. Appellant either deposited or  
7 supervised the depositing of wood materials on the Apple site which  
8 produced the leachate that caused the water pollution in question.

9 III

10 For the occurrence on December 16, 1975, appellant was assessed a  
11 \$500 civil penalty (Docket No. DE 76-109) which penalty is one matter  
12 appealed to this Board.

3 IV

14 Appellant has since isolated the solid waste materials at the Apple  
15 site with clay borders and covering. Respondent's inspector did not  
16 find leachates on his subsequent visits to the site.

17 V

18 Beginning in March of 1975, on a second piece of property located  
19 adjacent to 5th Street Northwest near the Town of Milton (hereinafter  
20 "Olson site"), appellant arranged to have woodwaste product from a nearby  
21 pulp mill deposited on the site at the request of the property owner.  
22 Appellant supervised the placement of materials and personally spread the  
23 materials with a bulldozer. No permit for the disposal of solid waste  
24 was issued for the Olson site. As a result of citizens' complaints,  
25 respondent's inspector visited the Olson site on December 15, 1975 and  
on numerous subsequent occasions. At that time, approximately 30,000

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 cubic yards of woodwastes were at the site causing leaching into drain-  
2 age water. The fill thus created by appellant altered the natural  
3 drainage pattern of the ground enabling the leachates to enter Hylebos  
4 Creek, a public water of the state, through drainage ditches at  
5 certain times, one of which was on December 16, 1975.

#### 6 VI

7 For the occurrence on December 16, 1975, appellant was assessed a  
8 \$250 civil penalty (Docket No. DE 76-110) which penalty is the second  
9 matter appealed to this Board.

#### 10 VII

11 The problem created by appellant at the Olson site is a continuing  
12 one. The Department's solution to appellant's problem requires the  
13 complete removal of the deposited wastes.

#### 14 VIII

15 Leachates sampled at the Olson and Apple sites on December 16, 1975  
16 were water contaminants which altered the physical, chemical or biological  
17 properties of the receiving waters of the state.

#### 18 IX

19 Any Conclusion of Law which should be deemed a Finding of Fact  
20 is hereby adopted as such.

21 From these Findings the Pollution Control Hearings Board comes  
22 to these

#### 23 CONCLUSIONS OF LAW

#### 24 I

25 The Board has jurisdiction over the persons and over the subject  
26 matter of this proceeding which is the alleged violation of chapter

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 90.48 RCW. The fact that dumping at the Apple site was authorized by  
2 a solid waste disposal permit pursuant to chapter 70.95 RCW does not  
3 authorize the violation of another statute at that site.

4 II

5 RCW 90.48.080 provides in part that:

6 It shall be unlawful for any person to throw, drain, run,  
7 or otherwise discharge into any of the waters of this state,  
8 or to cause, permit or suffer to be thrown, run, drained,  
9 allowed to seep or otherwise discharged into such waters any  
organic or inorganic matter that shall cause or tend to  
cause pollution of such waters . . . .

10 RCW 90.48.144 provides in part that:

11 Every person who . . . [v]iolates the provisions of RCW 90.48.080,  
12 shall incur, in addition to any other penalty as provided by  
13 law, a penalty in an amount of up to five thousand dollars a  
14 day for every such violation. . . . Every act of commission or  
omission which procures, aids or abets in the violation shall  
be considered a violation under the provisions of this section  
and subject to the penalty herein provided for. . . .

15 III

16 On December 16, 1975, appellant violated RCW 90.48.080 at the  
17 Apple site and at the Olson site for which civil penalties were properly  
18 assessed pursuant to RCW 90.48.144. The civil penalties are reasonable  
19 in amount and should be affirmed.

20 IV

21 Any Finding of Fact which should be deemed a Conclusion of Law  
22 is hereby adopted as such.

23 From these Conclusions, the Pollution Control Hearings Board enters  
24 this

25 ORDER

3 1. Respondent's Motion to Dismiss appellant's appeal in Docket

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 No. DE 76-111 is granted and the appeal thereto is dismissed.

2 2. The \$500 civil penalty (Docket No. DE 76-109) is affirmed.

3 3. The \$250 civil penalty (Docket No. DE 76-110) is affirmed.

4 DONE this 29<sup>th</sup> day of Aug., 1977.

5 POLLUTION CONTROL HEARINGS BOARD

6 Chris Smith  
7 CHRIS SMITH, Member

8 Dave J. Mooney  
9 DAVE J. MOONEY, Member

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FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER